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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA, Respondent, v. KENNETH GLENN HUNTER, Petitioner.	2 CA-CR 2008-0119-PR DEPARTMENT B MEMORANDUM DECISION Not for Publication Rule 111, Rules of the Supreme Court

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20011998

Honorable Howard Hantman, Judge

REVIEW GRANTED; RELIEF DENIED

Barbara LaWall, Pima County Attorney
By Jacob R. Lines
Tucson
Attorneys for Respondent

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By Anne Elsberry
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Attorneys for Petitioner

E C K E R S T R O M, Presiding Judge.

¶1 Kenneth Glenn Hunter was convicted after a jury trial of burglary, theft of a means of transportation by control, and aggravated assault with a deadly weapon or dangerous instrument. The trial court sentenced him to concurrent, aggravated terms of

imprisonment, the longest of which was fifteen years. We affirmed his convictions and sentences on appeal. *State v. Hunter*, No. 2 CA-CR 2002-0305 (memorandum decision filed May 10, 2005). Hunter did not seek review of that decision, and our mandate issued on July 19, 2005.

¶2 In July 2006, Hunter filed a notice of post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P.[1] In the petition and three supplemental petitions that followed, Hunter argued he had been denied due process of law because (1) the trial court declined to strike a venire panel after one of its members had expressed the opinion that Hunter was guilty, (2) his presentence report was inaccurate, and (3) the state had placed Brooke S., a witness, under duress in order to elicit her testimony. Hunter also claimed to have newly discovered evidence that Brooke had perjured herself at trial and now wished to recant her testimony.

¶3 In addition, Hunter raised multiple claims of ineffective assistance of counsel. He alleged appellate counsel had been ineffective in failing to seek supreme court review of our decision on appeal, and he maintained trial counsel had been ineffective in (a) reporting Hunter to the court for an alleged security violation, (b) failing to show crime scene photographs to Hunter before they were admitted at trial, (c) failing to use a letter Hunter had received from Brooke to impeach her testimony, (d) refusing Hunter's requests to file a pro se motion for new trial and other pro se motions Hunter had prepared, and (e) failing to offer evidence at trial that Hunter owned two vehicles and had been employed for the ten years prior to the date of the offense.

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[1]Although Hunter's notice was untimely, *see* Ariz. R. Crim. P. 32.4(a), he asserted the untimeliness was not his fault because he had provided his notice to appellate counsel in a timely fashion, but counsel had failed to file it. *See* Ariz. R. Crim. P. 32.1(f).

¶4 The trial court did not grant an evidentiary hearing but allowed the parties to locate Brooke and ask her about Hunter's allegations. After the state filed a transcript of counsel's telephonic interview with Brooke, the court denied Hunter's petition in a detailed, fifteen-page ruling that addressed each of his claims. We will not disturb a trial court's ruling on a petition for post-conviction relief absent an abuse of discretion. *State v. Watton*, 164 Ariz. 323, 325, 793 P.2d 80, 82 (1990). We find none here.

¶5 The trial court's minute entry clearly addressed Hunter's arguments, identified precluded claims, and explained the basis for the court's implicit determination that "no remaining claim present[ed] a material issue of fact or law which would entitle [Hunter] to relief" and that "no purpose would [have] be[en] served by any further proceedings." Ariz. R. Crim. P. 32.6(c). Hunter develops no argument explaining why he believes the court's ruling is legally or factually incorrect, and his petition for review is a near-verbatim recitation of the claims he presented to the court in his petition below. Although Hunter correctly states that a defendant is entitled to an evidentiary hearing when he presents a colorable claim, one "which if his allegations are true might have changed the outcome," *State v. Schrock*, 149 Ariz. 433, 441, 719 P.2d 1049, 1057 (1986), he fails to analyze any of his claims in the context of this standard.[2]

[2]In conclusory fashion, Hunter does contend the trial court "erred" in failing to grant an evidentiary hearing "to determine whether trial counsel was ineffective when he failed to request a new trial pursuant to Rule 24.1, Ariz. R. Crim. P., and thereby challenge the sufficiency of the evidence." But this claim does not appear to have been raised or argued below and therefore is not properly before us on review. *See* Ariz. R. Crim. P. 32.9(c)(1)(ii) (petition for review to contain issues "decided by the trial court . . . which the defendant wishes to present to the appellate court for review"); *State v. Ramirez*, 126 Ariz. 464, 468,

¶6 Similarly, we agree with the trial court that, with respect to each of his assertions that counsel was ineffective, Hunter has failed to meaningfully argue why counsel's alleged incompetence gave rise to "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different," as required to obtain relief on a claim for ineffective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668, 694 (1984); *see also State v. Salazar*, 146 Ariz. 540, 541-42, 707 P.2d 944, 945-46 (1985) (court need not address counsel's alleged deficiencies if showing of prejudice insufficient).

¶7 In sum, in its minute entry denying relief, the trial court clearly identified and addressed each issue raised and correctly ruled on those issues in a manner that will enable this and any other court in the future to understand their resolution. Accordingly, we adopt the court's ruling, having no reason to revisit it. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993). Although we grant review, we deny relief.

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PETER J. ECKERSTROM, Presiding Judge

CONCURRING:

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PHILIP G. ESPINOSA, Judge

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GARYE L. VÁSQUEZ, Judge

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616 P.2d 924, 928 (App. 1980) (appellate court does not consider issues in petition for review that "have obviously never been presented to the trial court for its consideration").